

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Wyland Analyst: Roger Lackey Bill Number: AB 2705
Related Bills: See Legislative History Telephone: 845-3627 Introduced Date: 02-22-2002
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Excess Energy Costs Credit For Small-to-Medium Size Commercial Customers in San Diego

SUMMARY

This bill would allow a credit for small-to-medium size commercial energy customers located in the San Diego area that paid excess energy costs during a specified time period.

PURPOSE OF THE BILL

It appears the intent of the bill is to provide tax relief for high energy costs paid by certain businesses.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately and would apply to taxable years beginning on or after January 1, 2002, and before January 1, 2004.

POSITION

Pending.

Summary of Suggested Amendments

Department staff is available to assist the author's office in resolving the implementation considerations and policy considerations addressed below.

ANALYSIS

FEDERAL/STATE LAW

Both state and federal laws allow a deduction for all ordinary and necessary expenses of a trade or business, including expenses relating to energy costs.

Deductions for the personal expenses of an individual taxpayer, such as energy costs, are generally not allowable. Individual taxpayers may claim as itemized deductions some personal expenses, such as excess medical expenses, charitable contributions, mortgage interest, and property taxes.

State and federal laws provide various tax credits designed to provide tax relief for taxpayers that incur certain expenses (e.g., renter's credit) or to influence behavior, including business practices and decisions (e.g., research credits).

Board Position:

____ S ____ NA ____ NP
____ SA ____ O ____ NAR
____ N ____ OUA ____ X PENDING

Department Director

Date

Alan Hunter for GHG

04/12/02

Neither state nor federal laws have a credit comparable to the credit proposed by this bill.

THIS BILL

This bill would allow a taxpayer to claim a credit equal to 50% of their "excess energy costs" in 2002 and 2003. This credit would only apply to small-to-medium size commercial customers.

"Excess energy costs" would mean the total amount charged from June 1, 2000, to February 7, 2001, less the total amount that would have been charged during that period had the rate freeze of \$0.065 per kilowatt-hour been in effect for that customer.

"Small-to-medium size commercial customer" would include, but would not be limited to, all San Diego Gas and Electric Company (SDGE) accounts on Rate Schedule AL-TOU between 100 and 500 kilowatts capacity.

Within six months after the effective date of this bill, SDGE would be required to identify the small-to-medium size commercial customers eligible for this credit. This bill also would require SDGE to calculate the total amount of excess costs for each of the customers and to report that amount to the customer.

The bill would not allow any other deduction for that portion of costs paid or incurred for which a credit is allowed.

Any excess credit could be carried forward to subsequent years.

IMPLEMENTATION CONSIDERATIONS

This bill would define "small-to-medium size commercial customers" as including, but not limited to, all SDGE accounts on a specified rate schedule. As a result, "small-to-medium size commercial customers" could be interpreted to mean any taxpayer regardless of size or being on SDGE's accounts. It is unclear what the author's intent is in including the "but not limited to" phrase in the definition since another provision in the bill requires SDGE to identify the customers eligible for this credit.

This bill would require SDGE to communicate to the customer its eligibility and excess energy costs, but there is no provision allowing the department to verify that information nor is SDGE required to provide such information to the department. Administration of this credit for the department would be greatly simplified if SDGE were required also to provide the department with a copy of the list of eligible customers.

“Excess energy costs” are determined by taking the total amount charged to each small-to-medium size commercial customer. It is not clear what “total amount charged” would include, since the bill does not directly tie the total amount charged to energy costs. As a result, any amount charged against the taxpayer during the specified period would be eligible in determining “excess energy costs.” This could include, for example, items such as late charges, collection fees, and interest. The author may want to consider amending this bill to clearly identify which costs are properly treated as energy costs qualifying for this credit.

This bill provides a credit for “excess energy costs” but does not further define energy. As a result, costs for energy other than electrical energy (i.e., natural gas) would also be eligible for this credit.

This bill would specify that no deduction would be allowed for any portion of costs paid or incurred for which a credit is claimed. Since a taxpayer would be required to reduce their deductions for the 2000 and 2001 taxable years, which is when the energy costs qualifying for this credit would have been paid or accrued, a taxpayer may have to either file amended returns or adjust any net operating losses it may have incurred for those years, and possibly pay additional tax for those taxable years. It would be difficult for the department to know whether a taxpayer filed the appropriate amended returns. In addition, since the credit is not available for the 2000 and 2001 taxable years, the taxpayer would not be able to apply the credit allowed by this bill to those additional taxes.

This bill does not limit the number of years for the carryover period. The department would be required to continue to retain the carryover on the tax forms indefinitely because an unlimited credit carryover period is allowed after the credit itself has expired. Recent credits have been enacted with a carryover period limitation since experience shows credits are typically used within eight years of being earned.

TECHNICAL CONSIDERATIONS

The term “excess energy costs” is used throughout the bill. However, the subdivision of the bill requiring the SDGE to calculate excess energy costs only refers to the total “excess costs.” Amendment 1 and 3 would clarify that “excess costs” means “excess energy costs.”

This bill would not allow a deduction for the costs associated with obtaining the credit. In the subdivision adding this provision, an “is” was inadvertently excluded. Amendment 2 would add “is.”

LEGISLATIVE HISTORY

SB 571 (Morrow, 2001/2002) would have allowed a credit for any excessive energy costs paid by residential or commercial customers. SB 571 failed to pass out of the Senate Revenue and Taxation Committee.

SB 49X and SB 49XX (Morrow, 2001/2002) contained the same language as SB 571. SB 49X died in the Assembly Revenue and Taxation Committee when the first extraordinary session was terminated. SB 49XX failed to pass out of the Senate Revenue and Taxation Committee.

OTHER STATES' INFORMATION

Although *Florida (corporate tax only)*, *Illinois*, *Massachusetts*, *Michigan*, *Minnesota*, *Michigan*, and *New York* do not provide a tax credit comparable to the credit proposed in this bill, the following is a brief list of some incentives provided related to energy. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

Michigan: Provided a credit through 2000 for heating fuel costs for a low-income taxpayer's homestead. For 1988, costs eligible for the credit were limited to \$1,190. This amount was adjusted by the Detroit consumer price index for fuels and other utilities.

Massachusetts: Currently has an energy credit that is equal to 15% of the net expenditures or \$1,000 whichever is less.

New York: For personal income tax only, a credit is allowed for solar generating equipment equal to 25% of certain solar generating expenditures. The credit is capped at \$3,700 per system.

FISCAL IMPACT

Implementing this bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Due to the implementation concerns, it is not possible at this time to develop a comprehensive fiscal analysis of the bill. However, the potential exists for revenue losses in the hundreds of millions of dollars for fiscal years 2002-03 and 2003-04.

ARGUMENTS/POLICY CONCERNS

Generally, credits are enacted to motivate a certain behavior by the taxpayer. This bill provides fails to motivate such behavior. Instead, it would allow a credit for expenditures incurred more than a year ago. This bill could thus be interpreted as providing a gift of public funds.

This bill appears to allow a taxpayer a credit equal to 50% of their "excess energy costs" in each taxable year beginning on or after January 1, 2002, and before January 1, 2004. A taxpayer may have more than two taxable years during a 24-month period, which could occur in the case of certain reorganization transactions requiring a short period tax return. It is unclear whether such a taxpayer would be entitled to a 50% credit for each of these multiple years, resulting in a credit that would exceed 100% of the total expenditures, or would be limited to a 100% of total excess energy costs credit. Finally, at a minimum it appears that the credit is equal to 100% of the "excess energy costs," which is unprecedented under state tax law.

Since it appears that the intent of this bill is to grant certain SDGE customers relief from past high energy costs, it may be more appropriate to develop a rebate program administered through the Public Utility Commission and SDGE, rather than an income tax credit.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2705
As Introduced February 22, 2002

AMENDMENT 1

On page 3, line 16 after "excess" insert:

energy

AMENDMENT 2

On page 3, line 23 after "credit" insert:

is

AMENDMENT 3

On page 4, line 12 after "excess" insert:

energy